construction of this clause was raised both by the respondent in the points of claim and by the appellant in the points of defence. He relied on paragraph 2 of the points of claim and paragraph 2 of the points of defence.

Paragraph 2 of the points of claim merely states that the respondent took out the policy and it then sets out the terms of clause (b) of the outside liability provisions. In paragraph 2 of the points of defence the appellant stated that he admitted "the allegations contained in paragraphs 2 and 6 of the points of claim but will rely on the terms and conditions of the said Policy of Insurance for their full terms and effect" We do not agree with the submission that the construction of clause (b) had been specifically raised in the pleadings.

Next it was submitted that the construction of clause (b) was before the arbitrator by virtue of paragraph 5 of the points of defence. Paragraph 5 was a general traverse and it is in common form. As a general traverse it did not affirmatively set up as a defence the construction of clause (b).

The next point taken was that the learned Chief Justice was wrong in holding that the arbitrator had gone beyond his jurisdiction in dismissing the respondent's claim for the reasons given in the award of the arbitrator.

From the pleadings it is quite clear that when the parties went before the arbitrator they had agreed that the arbitrator should, apart from the question of quantum, decide the issue of liability on the two defences pleaded, namely (1) that the exclusion clause (f) in the policy excludes liability for damage caused by piledriving, subsidence or demolition or resulting from the removal or weakening of support and (2) that the respondent had failed to take reasonable and proper precautions to prevent the accident as required by the outside liability provisions.

The authorities show that an arbitrator must decide the question or questions submitted to him for decision and that he must not go beyond that.

In *Bond Air Services Ltd.* v. *Hill*[2] Lord Goddard C.J., in the course of his judgment said (at page 479):

"I do not think it can be doubted that, ordinarily, it is for the underwriter to prove a breach of condition, at least where he is not contending that the policy is void on the ground that there has been a breach of condition precedent to the formation of the policy. So, too, it is for him to prove an exception. The difference between a condition and an exception is that the former places some duty or responsibility on the assured, while the latter restricts the scope of the policy. That it is for the insurers who allege that the conditions were broken to prove it, has, I think, always been accepted, at least since Parke, B's judgment in *Barrett* v. *Jermy* ((1849), 3 Exch. 535 at p. 452)".

In *Re Green & Co. and Balfour, Williamson & Co.*, there was a contract for the sale of tinned salmon which provided "quality guaranteed good, merchantable, and equal to average of the spring pack of 1889 season C.R. Salmon . . . Any dispute to be settled by arbitration". Differences having arisen, arbitration proceedings took place. The arbitrators found that the salmon was not of the quality guaranteed, and directed, in accordance with an alleged custom in the Liverpool market, that the buyers should take delivery, subject to an allowance being made. It was held, by the Court of Appeal, that the only question referred was whether or not the goods were of the guaranteed quality; that the arbitrators had therefore exceeded their jurisdiction and that the award should be remitted to them for their reconsideration.

It was, therefore, for the appellant to plead it specifically in his points of defence if he had wished to submit to the arbitrator the construction of clause (b) of the outside liability provisions of the policy. This he failed to do and therefore the arbitrator had no jurisdiction to deal with that clause.

In our judgment the learned Chief Justice was correct in holding in this case that the arbitrator had gone beyond his jurisdiction in dismissing the respondent's claim on a ground which was not specifically pleaded and which was not referred to him.

For these reasons we dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Laycock & Ong; Ong Tiang Choon & Co.*

PHUAH JEE SUAN v. NILA VASU PILLAI

[C.A. (Chua, Choor Singh and Tan Ah Tah JJ.), February 27, 1973]

[Singapore — Civil Appeal No. 3 of 1972]

Damages — Personal injuries — Quantum — Assessment — Whether court may add 20% to award owing to increase in cost of living — Lump sum award — Scaling down of award on the ground of overlapping — Increase in cost of living.

In this case the plaintiff had obtained damages for personal injuries suffered by her and caused by the negligent driving of the defendant. The Deputy Registrar assessed general damages in the sum of $28,800. The defendant thereupon appealed to the High Court on the ground that the Deputy Registrar having assessed general damages in the sum of $24,000 had wrongly increased them by 20%, that is, had added the sum of $4,800 to the award on the ground that there was a discernible trend of a twenty per cent increase in the recent awards of the High Court. Wee Chong Jin C.J. who heard the appeal reduced the award by the said sum of $4,800 ([1972] 1 M.L.J. 202). The plaintiff thereupon appealed to the Court of Appeal.

Held: dismissing the appeal: (1) the method adopted by the Deputy Registrar in assessing general damages was wrong;

(2) as there were several injuries the principle of overlapping was applicable and the Deputy Registrar was wrong in not scaling down the total on that account; he was also wrong in assessing total damages and then applying a blanket increase of 20%;

(3) a lump sum should have been awarded after taking into consideration all the relevant factors, including the increase in the cost of living;

(4) the amount of $24,000 awarded as general damages in this case was not so inordinately low as to be a wholly erroneous estimate of the damage.

Cases referred to:-

(1) *Senior* v. *Barker & Allen Ltd.* [1965] 1 W.L.R. 429.

(2) *H. West & Son Ltd.* v. *Shephard* [1964] A.C. 326.

(3) *Wieland* v. *Cyril Lord Carpets Ltd.* [1969] 3 All E.R. 1006.

(4) *Wharton* v. *Sweeney* 105 S.J. 887.

(5) *Aikan* v. *Port of London Authority* [1963] 1 Ll.Rep. 44.

(6) *Sands* v. *Devan* [1945] S.C. 380.

(7) *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [1964] M.L.J. 463.

(8) *Fletcher* v. *Autocar and Transporters Ltd.* [1968] 1 All E.R. 726.

(9) *Nance* v. *British Columbia Electric Rail Co. Ltd.* [1951] A.C. 601.

COURT OF APPEAL.

H. E. Cashin for the appellant.

Yap Tyou Min for the respondent.

Choor Singh J. (delivering judgment of the court): This appeal arises from a claim by the plaintiff for damages for personal injuries suffered by her and caused by the negligent driving of the defendant. A writ and statement of claim having been served on the defendant and no defence having been filed, the plaintiff entered judgment for damages to be assessed. The hearing on the question of damages took place before the learned Deputy Registrar who assessed general damages in the sum of $28,800 and special damages in the sum of $1,100. The defendant thereupon appealed to the High Court on the ground that the learned Deputy Registrar having assessed general damages in the sum of $24,000, had wrongly increased them by twenty per cent, that is, had added the sum of $4,800 to the award on the ground that there was a discernible trend of a twenty per cent increase in the recent awards of the High Court. The appeal was heard by the honourable the Chief Justice who reduced the award by the said sum of $4,800. The plaintiff being dissatisfied with the judgment of the Chief Justice now appeals to this court against the said judgment.

The facts are not in dispute. At the hearing on the question of damages before the learned Deputy Registrar, evidence was given by the plaintiff and a specialist doctor on the nature of injuries suffered by the plaintiff. After hearing submissions made by both counsel the Deputy Registrar, as earlier stated, assessed general damages at $24,000 plus twenty per cent *i.e.* in all $28,800, and it is common ground that this twenty per cent was added because he accepted the submission made by counsel for the plaintiff that recently the High Court has made awards in running down cases which represent an increase, generally speaking, of twenty per cent when compared with awards for comparable injuries made in earlier years. It is also apparent from the record of the hearing before the Deputy Registrar that the sum of $24,000 assessed as general damages was the total of six items in respect of six different injuries. Counsel for the defendant had submitted that this total should be scaled down on the principle of over-lapping, and counsel for the plaintiff had opposed such scaling down on the ground that there were six separate and distinct injuries and therefore there was no question of scaling down. As the sum of $24,000 was not scaled down by the Deputy Registrar it is clear that he either did not accept the principle of scaling down or he was of the view it was not applicable to the facts of this case.

Before the Chief Justice the award of $28,800 was attacked by counsel for the defendant on the ground that the Deputy Registrar was wrong in increasing the assessment of general damages by twenty per cent and that such increase was arbitrary and wrong. On the other hand counsel for the plaintiff maintained that the Deputy Registrar was justified in adding twenty per cent and he repeated his arguments before the Deputy Registrar. In allowing the appeal the Chief Justice observed: —

"... In my judgment the Deputy Registrar was wrong in principle in assessing damages on that basis. The well known and long established principles which govern a court in assessing general damages for injuries sustained by a plaintiff arising out of the negligence of a defendant are still applicable and they do not permit a court to arrive at an amount it would award and then to add a percentage increase on to it because of, say, an increase in the cost of living.

In the present case, in my judgment the Deputy Registrar has indicated that for all the injuries sustained by the plaintiff the sum of $24,000 would be his estimate of the general damages and I am unable to say that this sum is so inadequate as to justify this court, in its appellate capacity to interfere with it. I therefore allowed the appeal."

Before us it was contended by counsel for the plaintiff that the learned Chief Justice was wrong in stating that the Deputy Registrar had indicated that he had assessed total damages at $24,000. Counsel submitted that it was apparent that the Deputy Registrar was convinced that a fair amount of general damages for the injuries suffered was $28,800 and that although the method by which he arrived at this figure may have been wrong the substance of his judgment is that he considered the total sum of $28,800 as a fair award and accordingly the Chief Justice was wrong in reducing it to $24,000. Counsel went on to submit that damages are simply a sum of money given as compensation for the injury sustained and judges are responsible for altering the damages and increasing them according to the prevalent cost of living. He relied on the following passage from the judgment of Lord Denning M.R. in *Senior* v. *Barker & Allen Ltd.*,[1] at page 432: —

"... I should like to draw attention to the fact that in 1953 in this court in an accident of almost identical description to a man of 24, the judge had awarded only £750 general damages and this court increased them to £2,100, making £2,500 in all. That was in the year 1953. We all know how the value of money has changed since that time. This award of £7,000 today shows how the judges keep pace with the times. This figure, and I think Mr. Davies agreed on behalf of the boy, is far higher than would have been given a few years ago. Wages have gone up, money has altered, and so the sums which are awarded have gone up. I must say that I can see no error in the sum which the judge awarded, and I would dismiss the appeal."

Counsel for the defendant pointed out that before the Deputy Registrar, the plaintiff's counsel had suggested and asked for an amount for each injury; that he asked for a total of 23 to 25 thousand dollars; that the Deputy Registrar assessed general damages at $24,000 which was a figure well within the range suggested by counsel for the plaintiff; and that as the Deputy Registrar failed to apply the principle of overlapping, the award of $24,000 was not only generous

but also fair having regard to the increase in the cost of living. Counsel submitted that the Chief Justice was right in reducing the general damages from $28,800 to $24,000 and that his judgment should be sustained.

There are two matters which require consideration in this appeal. First, the method by which the Deputy Registrar assessed general damages. We agree with the Chief Justice that the method suggested by counsel for the plaintiff and adopted by the Deputy Registrar was entirely wrong. It has been long established that in a claim for damages for personal injuries the court awards a lump sum based on a number of elements or aspects.

The most authoritative pronouncement on the requirement that the award should be a lump sum, will be found in *H. West & Son Ltd.* v. *Shephard*,[2] where Lord Pearce said, at page 365: —

"... If a plaintiff has lost a leg, the court approaches the matter on the basis that he has suffered a serious physical deprivation, no matter what his condition of temperament or state of mind may be. That deprivation may also create future economic loss which is added to the assessment. Past and prospective pain and discomfort increase the assessment. If there is loss of amenity apart from the obvious and normal loss inherent in the deprivation of the limb — if, for instance, the plaintiff's main interest in life was some sport or hobby from which he will in future be debarred, that too increases the assessment. If there is a particular consequential injury to the nervous system, that also increases the assessment.... These considerations are not dealt with as separate items but are taken into account by the court in fixing one inclusive sum for general damages."

When there are several injuries, it is not proper to add up what each would be worth separately; there is likely to be some overlap because much of the general handicap and discomfort may be common in both *e.g.* detention in hospital, inability to move about or enjoy recreation. No doubt the combined effect of several injuries may be more than the sum of each taken separately, as where both arms are handicapped, but usually the effect is the other way. The principle of scaling down the total sum assessed for several injuries on the ground of overlapping is too well established for it to be disregarded. It was reaffirmed and applied recently in *Wieland* v. *Cyril Lord Carpets, Ltd.*[3] In that case there were two injuries, one was an injury to the neck and the other to an ankle and it is difficult to imagine two more remote injuries. In applying the principle of overlapping, Eveleigh J. said, at page 1011: —

"In so far as the injury to the ankle is concerned, I find it difficult to value it in isolation because it does, to a measure, overlap the other injury in the sense that the loss of amenities of life and discomfort experienced by the plaintiff resulted from two simultaneous operating causes.... It would therefore be wrong in my view to value the second injury as though the first had not taken place and then to add the two figures together."

The other matter which requires consideration is the question of changes in the value of money which has been often termed as the decrease in the purchasing power of the dollar or the increase in the cost of living over the years. Leaving authority aside, both principle and common sense require that the courts, when they assess an award of money, which is to compensate a plaintiff for the damage caused to him by his injuries, should take into account large and comparatively permanent changes in the real value, *i.e.* in the purchasing power, of money. If one tries to assess an award for personal injuries today, and looks for guidance to an award made twenty years ago in a comparable case, the decline in the real value of money must be taken into account. The matter does not rest only on common sense and principle. There is considerable authority for this proposition. In *Wharton* v. *Sweeney*,[4] Ormerod L.J. referred to the question in these words: —

"It is well that there should be some consistency, and the amounts awarded in the past are a useful and general guide — bearing in mind the variation of circumstances and bearing in mind too — and this is important — the changes in the value of money over the years."

And in *Aiken* v. *Port of London Authority*,[5] Willmer L.J. said,

"Our attention was drawn to other cases where this court has had to deal with similar injuries sustained. They were mostly cases decided some ten or twelve years ago.... As was pointed out by Mr. Marven Everett, some allowance has to be made for the fall in the value of money since these cases were decided. He might, I think, have gone on to observe that in any damages awarded now allowance should be made for the possibility that the value of money may continue to fall in the future."

In *Sands* v. *Devan*,[6] Lord Normand said, "Since we must perforce measure the damage in money, we must, I think, take account of large and relatively permanent variations in the value of money." And Lord Moncriff added, "As regards what falls to be paid in money the court must take note of changes in the value of money."

It would be extremely difficult, if not, impossible, for a judge to assess proper damages without some guidance from past cases and the principle of having regard to awards in comparable cases has been approved by the House of Lords in *H. West & Son., Ltd.* v. *Shephard*,[2] and also by the Privy Council in *Jag Singh* v. *Toong Fong Omnibus Co., Ltd.*[7] It is therefore imperative that where an old comparable case is considered, there should be an adjustment for the change in the value of money which should be reflected in the award. The difficulty always is in ascertaining the change or the comparative value of money at two different dates several years apart. In this connection it is futile to refer to the fall in the purchasing power of the English pound. As was pointed out by the Judicial Committee in *Jag Singh* v. *Toong Fong Omnibus Co., Ltd., supra*, comparisons should be made with cases "in the same jurisdiction or in a neighbouring locality where similar social, economic and industrial conditions exist." The economic conditions in England and Singapore are vastly different. Unlike England, there is no inflation in Singapore or for that matter in Malaysia. Furthermore, wages in England of the working class have been consistently on the rise whereas in Singapore there has been no general revision of salaries for a very long time. A government committee appointed last year to consider the matter recommended an increase of wages of only eight per cent.

We agree that there has been some increase in the cost of living in Singapore over the last few years but the court should not be concerned with detailed

calculations as to the past decline of the Singapore dollar. It should take the change of the value of money into account in a general broad way. As was said by Salmon L.J. in *Fletcher* v. *Autocar and Transporters, Ltd.*,[8] at page 750: —

"The damages awarded should be such that the ordinary sensible man would not instinctively regard them as either mean or extravagant, but would consider them to be sensible and fair."

Such an assessment can be reached only by the collective instinct of the judges, using their knowledge of the current values of not only money but society as well, for the assessment of personal loss is to express its worth in dollars and cents according to current social standards as reflected in the general level of awards by the courts.

Reverting to the facts of this case, it will be seen that the Deputy Registrar was clearly in error in assessing general damages in the manner in which he did. On the facts, the principle of overlapping was applicable and he was wrong in not scaling down the total on that account. He was also wrong in assessing total damages first and then applying a blanket increase of 20 per cent. The increase in the cost of living should have been taken into consideration by the learned Deputy Registrar in assessing the amount of general damages. In other words a lump sum should have been awarded after taking into consideration all the relevant factors including the increase in the cost of living.

The quantum of damages is very much a question of fact and degree and a court of appeal is always reluctant to interfere with the assessment of a judge unless there has been misdirection in law, or the amount is manifestly too much or too little. As was pointed out by Viscount Simon L.C. in *Nance* v. *British Columbia Electric Rail Co., Ltd.*,[9] an appeal against the decision of a judge upon the *quantum* of damages will not be allowed unless either: —

(i) the judge has applied a wrong principle of law; or

(ii) "the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."

In this case the increase in the amount of damages due to the rise in the cost of living is in our opinion offset by the amount by which the damages assessed by the Deputy Registrar should have been reduced as a result of the application of the principle of overlapping. We are therefore unable to say that the amount of $24,000 awarded as general damages is so inordinately low that it is "a wholly erroneous estimate of the damage." The appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Batterberg & Talma.*

HILBORNE v. LAW SOCIETY OF SINGAPORE

[C.A. (Wee Chong Jin C.J., Winslow and Kulasekaram JJ.), March 5, 1973]

[Singapore — Civil Appeal No. 39 of 1972]

Advocate and Solicitor — Disciplinary proceedings — Improper words uttered by counsel — Judge confirming order made by Council of Law Society for payment of penalty — Whether appeal lies to Court of Appeal — Supreme Court of Judicature Act (Cap. 15), s. 29 — Legal Profession Act (Cap. 217), ss. 86(2), 89(1), 95 and 96.

The appellant, an advocate and solicitor, applied to the Court of Appeal for the further hearing of an appeal as he alleged that he had received fresh information which showed that statements made by the respondents in the case were either not true or inaccurate and misleading. The judges of the Court of Appeal after hearing the appeal in Chambers refused to reopen the appeal and the appellant then uttered the words that "in refusing to reopen the appeal the judges were setting the seal on dishonesty." The Registrar of the Supreme Court on the instructions of the judges requested the Law Society of Singapore to act under section 86(2) of the Legal Profession Act. The Council of the Law Society after considering the report of the inquiry committee ordered the appellant to pay a penalty of $250. An application was then made by the appellant to a judge to set aside the council's order but the learned judge refused to set aside the order. The appellant thereupon appealed to the Court of Appeal.

Held, dismissing the appeal: (1) the order made by the judge of the High Court in this case was not an order made by the High Court in a civil matter either in the exercise of its original or its appellate jurisdiction and therefore the Court of Appeal had no jurisdiction to hear and determine the appeal;

(2) the order in this case was made under a special procedure in respect of disciplinary proceedings affecting the legal profession and the Court of Appeal had no jurisdiction to entertain an appeal from the order made by the judge;

(3) in any case, there is no reason to interfere with the order of the Council of the Law Society as the words uttered by the appellant were improper and should not have been used.

COURT OF APPEAL.

T. G. Dunbar for the appellant.

Lim Tiong Quee for the respondents.

Wee Chong Jin C.J.: At the conclusion of the hearing, we dismissed this appeal against the refusal of Chua J. on 20th June 1972 in Chambers to set aside an order of 5th May 1972 made by the Council of the Law Society of Singapore that the appellant should pay a penalty of $250 under section 89(1) of the Legal Profession Act (Cap. 217) (hereinafter referred to as "the Act").

We now give our reasons.

A preliminary question arose as to the competence of such an appeal to the Court of Appeal in the absence of any specific provision to this effect in Part VII of the Act which relates to disciplinary proceedings affecting members of the legal profession. Further, it seemed to us that a doubt arose as to whether the order made under section 95 of the Act was an order made in the exercise of the original civil jurisdiction conferred on the High Court by section 29 of the Supreme Court of Judicature Act (Cap. 15) having regard to the subject matter of the appeal and the context of the situation in which the action of the respondent was originally invoked, to say nothing of